permission. The language is immaterial if the meaning is plain. All that is necessary is the debtor should be given to understand that the debt has been made over by the creditor to some third person. If the debtor ignores such a notice, he does so at his peril."

There is, in my view, nothing in exhibit AB1 which encourages the conclusion that it merely authorises payment to an agent, or, for that matter, a collecting agent. There is a clear direction to the board to make all future payments to the bank against bills submitted for projects undertaken by the company for the board. It was not, incidentally, as Mr. Lim suggested, a future payment of such a nebulous or indefinite character as to make the assignment bad. As Tindal C.J. said in *Crawfoot's* case *supra*, at page 656:

"It has been objected that such an assignment could not take place except in respect of a precise and ascertained amount. I cannot concur in that proposition, because all that can be required is, that the debt assigned should not be larger than the sum due to the party assigning".

Here, there could never have been any question of a larger sum being assigned than the sum due and the authority was to pay the bank direct whatever became due. The bank was to receive the money for itself, not to account of or on behalf of the company or as its agent. The mere fact that the company may have an account with the bank does not operate to constitute the latter an agent of the company of all monies authorised to be paid direct to the bank. If that had been the intention, exhibit AB1 could have easily said so.

Secondly, the fact that no indebtedness has been proved as between the company and the bank, does not prevent the inference that the assignment was by way of security. It can hardly be said that the company authorised the payments to the bank as voluntary donations on its part nor can the bank be held, by any stretch of imagination, to be a charitable institution of any kind whom the company intended to benefit. The conclusion is irresistible that there were financial facilities accorded by the bank to the company which the company wished to discharge. I think I ought also to say a few words about exhibit AB2 dated 27th June, 1962 which is a letter from the bank asking the board to confirm that it will make the payments due to the company to the bank in accordance with exhibit AB1. This letter, in my view, supports the bank's case in that, if it had merely been intended that the bank should hold the amount as agent of the company or to its account, it need not necessarily have written to ask for confirmation from the board.

Thirdly, the fact that the company, subsequent to the assignment, authorised the board to make small payments to sub-contractors and others out of monies due from the board does not, in my view, destroy the validity of the assignment or effect its revocation. Exhibit AB1 authorises payment "against bills submitted to the board" by the company. There was, in my opinion, nothing to prevent the company from submitting bills which took into account and made deductions in respect of monies advanced to it by the board from time to time. It was the final amounts due to the company as and when bills were submitted which were assigned. On a taking of accounts the board would know exactly what was due on each project to the company and was bound to pay it to the bank.

Finally, I have given careful consideration to the question whether it could have been the intention of all the parties to this triangular arrangement, i.e. the company, the bank and the board, that the monies due to the company should, in fact, be credited to the company's account with the bank, although exhibit AB1 does not in so many words direct payment to the bank on behalf of the company or to its account. From a careful examination of all the documents in the agreed bundle of correspondence it seems to me that this was not in fact their intention. From exhibit AB8 it is clear that the last payment of the balance due to the company was made out by a cheque payable to the bank. Knowing that execution had been levied against the company for debts due by it to various creditors it is most unlikely that the board would have made out a cheque in favour of the bank if such monies were merely to be held by the bank to the credit of the company's account. It should be noted that exhibit AB8, purports to be signed by the assistant secretary (legal) to the board who I am sure would have realised the implications of making such a payment to the bank *viz.*, that the bank would be receiving the monies on its own behalf and not on behalf of the company.

For these reasons I have no doubt that the bank is entitled to succeed with costs on the determination of this issue which I hereby decide in its favour.

Order accordingly.

Solicitors: *Chung & Co.; J. Y. P. Chia & Co.*

SHARIKAT BAKTI LTD. v. GURBACHAN SINGH

[O.C.J. (Gill J.) June 14, 1966]

[K.L. — Civil Suit No. 388 of 1966]

Practice and Procedure — Order 14 — Application for leave to sign judgment — Claim for declaration that defendant was trespasser of land and for order to deliver and vacate possession — Defence of estoppel — R.S.C. 1957, O. 14.

The plaintiffs applied under Order 14 of the Rules of the Supreme Court, 1957 for leave to sign final judgment against the defendant on a claim for a declaration

that the defendant was a trespasser on a piece of land, of which the plaintiffs were the registered proprietors, and for an order that the defendant do deliver to the plaintiffs vacant possession of the said land and do pay damages to the plaintiffs. The land in question formed part of the estate of one *J*, of which *M* and *H* were the administrators. The plaintiffs purchased the land from the said administrators on November 25, 1965. The defendant maintained that he had been a lawful tenant of the said land since 1954 by paying ground rents to one *JA*, who was acting as the agent of the administrators of the estate of *J*. He further and in the alternative alleged that even assuming that the said *JA* had acted without authority of the administrators, the administrators should have given notice of the lack of authority on the part of *JA*, and that by reason of their remaining silent for a period of more than 10 years the administrators were estopped from denying that the defendant was the lawful tenant of the said land. The order appointing the administrators was made on January 27, 1955 and the grant of letters of administration was extracted on June 1, 1955.

Held: (1) *JA* could not possibly have been the agent of the administrators long before the administrators acquired their status as such;

(2) the defence of estoppel could not be raised as the administrators made no representations whatsoever to the defendant. Their mere silence could not be raised as estoppel. If the administrators did nothing to oust the defendant from the land, the highest that could be said in favour of the defendant was that he was a bare licensee. That license came to an end when the successors in title to the administrators, the plaintiffs, gave notice to quit, after the expiry of which the defendant became a trespasser.

CIVIL SUIT.

Robert K. C. Hoh for the plaintiffs.

C. S. Heng for the defendants.

Gill J.: This was an application by the plaintiffs under Order 14 of the Rules of the Supreme Court, 1957 for leave to sign final judgment against the defendant on a claim for a declaration that the defendant is a trespasser on the land known as Lot No. 4759 in the Mukim of Batu, District of Kuala Lumpur, of which the plaintiffs are the registered proprietors, and for an order that the defendant do deliver to the plaintiffs vacant possession of the said land and do pay damages to the plaintiffs.

The land in question formed part of the estate of Jamiah binti Haji Abdul Rahman deceased, of which Mohamed Isa bin Mohamed Amin and Habsah binte Mohamed Amin were the administrators. The plaintiffs purchased the land from the said administrators on the 25th day of November, 1965.

The defence raised by the defendant is that he has been a lawful tenant of the said part of the land since 1954 by paying ground rents to one Junid bin Amin who at all material times was acting as the agent of the administrators of the estate of Jamiah binti Haji Abdul Rahman deceased. The defendant further and/or in the alternative alleges that even assuming that the said Junid bin Amin had acted without the authority of the administrators of the estate (which the defendant denies), the said administrators of the estate should have given notice of the lack of authority on the part of the said Junid bin Amin, and that by reason of their remaining silent for a period of more than ten years the administrators are estopped from denying that the defendant is the lawful tenant of the said land.

It is to be observed that the order appointing the administrators was made on 27th January, 1955 and that the grant of letters of administration was extracted on the first day of June, 1955. Junid bin Amin therefore could not possibly have been the agent of the administrators long before the administrators acquired their status as such. The only thing that can be said in favour of the defendant is that Junid bin Amin is one of the sons of the deceased, but that fact alone does not give him any authority to deal with any property belonging to the estate. Moreover, Mohamed Isa bin Mohamed Amin, one of the administrators, has filed an affidavit that neither he nor his co-administrator at any time held out the said Junid bin Amin to be their agent, either expressly or impliedly. On the facts, therefore, there was no substantial question to be tried.

As regards the defence of estoppel, which is a question of law, I formed the opinion that this could not possibly be raised as a defence, as quite clearly the administrators made no representations whatsoever to the defendant. Mere silence on their part cannot be raised as estoppel. If the administrators did nothing to oust the defendant from the land, the highest that can be said in favour of the defendant is that he was a bare licensee. This licence came to an end when the successors in title to the administrators, the present plaintiffs, gave notice to quit, after the expiry of which the defendant became a trespasser.

It was contended on behalf of the defendant that an application for summary judgment is not a trial. With that as a general statement I entirely agree, but in my opinion on the facts, taking into consideration all the circumstances of the case, there was no triable issue.

It was further contended on behalf of the defendant that mere silence may constitute estoppel if there is a duty to speak. In my opinion, there was no duty on the administrators to speak. As I have already stated, the utmost that can be said in favour of the defendant is that by allowing him to remain on the land the administrators had merely given him such rights as a bare licensee has. That, in my opinion, disposed of the question of law raised.

In the circumstances I gave leave to the plaintiffs to sign final judgment in terms of

paragraphs (a), (c), (d) and (e) of the prayer in the statement of claim.

Leave granted.

Solicitors: *Shook Lin & Bok; Heng, Chen & Co.*

YEE HOI KONG v. BAN SAN

[A.C.J. (Abdul Aziz J.) June 14, 1966]

[K.L. — Civil Appeal No. 8 of 1966]

Landlord and Tenant — Claim for possession — Burden of proof that premises are controlled — Evidence Ordinance, 1950, s. 103 — Premises and furniture let at entire rent — Return of furniture — Apportionment of rent — Control of Rent Ordinance, 1956.

This was an appeal against the decision of the learned president of the sessions court dismissing the claim by the appellant for the possession of premises let to the respondent. The appellant was the owner of the premises and had let the premises to one Balakrishnan for $25 a month. Balakrishnan sublet the premises to the respondent by an agreement under which the respondent was to pay $55 which was stated to be the rental for the premises and furniture in it. Subsequently Balakrishnan assigned the subtenancy to the appellant, the original landlord. The respond nt tendered rent of $25 to the appellant but this was refused. The appellant thereupon brought an action to recover possession of the premises. The respondent did not deny the tenancy but alleged (a) that as Balakrishnan had recovered the furniture there should be an apportionment of the rent for premises and furniture and (b) that the premises were controlled premises within the meaning of the Control of Rent Ordinance, 1956. The learned president held that the onus of proof that the premises were not controlled premises was on the appellant and as he did not prove that the house was built after January 31, 1948 the claim for vacant possession must be dismissed. He also apportioned the rent for the premises and the furniture and held that the rent for the premises was $25. The appellant appealed.

Held: (1) as it was the respondent who asserted that the premises were controlled premises, the burden of proof was on him and not on the appellant;

(2) in this case the respondent had not brought evidence to show that the premises were controlled and therefore the president of the sessions court was wrong in dismissing the claim of the appellant for possession;

(3) since the premises and furniture were let at an entire rent no apportionment could be made for the rent of the premises when the furniture was returned or unused.

Case referred to:—

(1) *Annamalai Chettiar* v. *Yeoh Kee Tin* [1957] M.L.J. 9.

CIVIL APPEAL.

S. Y. Chan for the appellant.

K. Raja Nayagam for the respondent.

Cur. Adv. Vult.

Abdul Aziz J.: The facts are fairly clear from the record. The plaintiff, who is the owner of a piece of land at 4½ milestone Kantin Road, Batu Village, Kuala Lumpur on which stood a temporary house, rented the premises unfurnished to one Balakrishnan some time in 1961 at $25 per month. In 1963 Balakrishnan sub-let the house to the defendant by a brief agreement wherein the defendant agreed to pay $55 per month "being the rental of premises used for the business purposes at the above address and the following furniture as per schedule". There were five items of furniture in the schedule and the agreement also stipulated that the defendant ageed to return the furniture whenever the owner demanded for his personal use without any dispute. At the end of 1963 Balakrishnan executed a written agreement under which in consideration of a payment of $1,000 he agreed to "quit and deliver vacant possession of the premises to the landlord". To my mind, having regard to the surrounding cricumstances this agreement was an assignment of sub-tenancy to the original landlord. After the execution of this agreement the defendant tendered rent at $25 per month from January to April 1964 which was refused. Since the rent was in arrears the plaintiff then issued a notice to the defendant terminating the tenancy. The defendant did not dispute the tenancy agreement under which the rent of the premises was $55 but he contended that since the furniture had been returned to Balakrishnan there should be an apportionment of rent for premises and furniture. His case was that the rent of the premises unfurnished should be $25 per month. He, further, contended that the notice was invalid as the premises were controlled premises within the meaning of the Control of Rent Ordinance, 1956.

The learned president in his grounds of judgment stated firstly that the onus of proving that the house was not controlled premises was on the plaintiff and since the plaintiff had not proved that the house was built after 31st January 1948 he dismissed the claim for vacant possession. As regards the claim for arrears of rent he found that the plaintiff had no claim on the furniture at all and consequently he could not claim any rent in respect of the same. He held, therefore, that rent payable was $25 per month and, therefore, gave judgment for arrears of rent based on that rate.

Against that judgment the plaintiff has now appealed, the main grounds of which were, firstly, that the learned president had erred in law in deciding that the burden of proof lay on the landlord to prove that the premises in question were outside the area of a local authority and, secondly, that the learned president erred in law in apportioning the rental for the premises and for the furniture when upon the true construction of the agreement no such apportionment was contemplated. As regards onus of proof it has been held in *Annamalai Chettiar*